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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/531,956	03/21/2000	Bryan M. Eagle III	11459/1	6873
23838	7590	07/06/2004	EXAMINER	
KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005			MORGAN, ROBERT W	
		ART UNIT	PAPER NUMBER	
			3626	
DATE MAILED: 07/06/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/531,956	EAGLE, BRYAN M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert W. Morgan	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 May 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 129-141 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 129-141 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/3/04 has been entered.

### ***Notice to Applicant***

This communication is in response to the amendment filed 5/3/04. Claims 1-128 have been cancel and claims 129-141 have been added. Now claims 129-141 are presented for examination.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 129-141 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,085,169 to Walker et al. in view of in view of “Air charter fly to Internet” by Jonas.

As per claim 129, Walker et al. teaches a conditional purchase offer (CPO) management system (100, Fig. 1) that includes a one or more secured airline servers (300, Fig. 11) that stores CPO rules (reads on “selecting a number of the received reservation bids, wherein the selected bids collectively satisfy a predetermined set of reservation criteria, said reservation criteria

including a departure location, a set of rules identifying possible destination locations, a departure time constraint”), defined by any associated airlines (see: column 6, lines 23-30). In addition, CPO rules are a set of restrictions defined by a given seller, such as an airline, to define a combination of restrictions for which the seller is willing to accept (reads on “accepting the selected bids”) at a predefined minimum price (see: column 44-47). Walker et al. further teaches an airline database (700, Fig. 7) that stores information on each airline, which registered with the CPO management system (100, Fig. 1) as well as a flight schedule database (reads on “posting an availability on an electronic medium”) (800, Fig. 6) that stores specific flight information for each origin and destination (O & D) Pair (see: column 9, lines 56-61). Furthermore, Walker et al. teaches a CPO management process (1600, Fig. 16a) where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item, such as air travel, at a customer-defined price, received from a customer and compared against the CPO rules provided by the airline and as a result of the comparison the CPO is either accepted, rejected or countered by the airline. Thereafter, the customer is notified of the response of the airlines to the CPO (reads on “communicating to each of the independent passengers associated with the selected bids a first notification of the acceptance”). If an airline accepts the CPO (reads on “communicating to an owner of the private aircraft a second notification of the acceptance”), or if the customer accepts a counteroffer from the airline, a ticket is then booked (reads on “transmitting to the owner of the aircraft a final passenger list and a final flight schedule that is substantially consistent with the departure time constraint, the departure location, and the specific destination request”) by the CPO management system (100, Fig. 1) (see: column 5, lines 31-43 and column 7, lines 55-67). Walker et al. also teaches a CPO management process

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(1600, Fig. 16C) where credit card information associated with a given customer is transmitted to the credit card issuer for payment (reads on “a payment offer” and “a minimum total payment required to reserve”) (see: column 9, lines 23-38).

Walker et al. fails to teach:

- the booking reservations on a plurality of private aircraft;
- the claimed receiving an availability for at least one private aircraft; and
- the claimed flying the private aircraft substantially according to the final flight

schedule.

Jonas teaches AirCharter.com which is an online real-time air charter reservation system with Internet booking capabilities for 2,000 aircraft from 800 charter operators (see: paragraph 2). Furthermore, AirCharter.com buys space and time from the charter operators at a wholesale price (see: paragraph 7). In addition, Jonas further teaches that SkyJet.com acts as an intermediary between customers and suppliers (see: paragraph 9).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include AirCharter’s 800 charter operators within the conditional purchase offer management system as taught by Walker et al. with the motivation of giving customers instant access to thousands of private aircraft carriers (see: paragraph 1).

As per claim 130, Walker et al. teaches an airline database (700, Fig. 7) that stores information on each airline, which registered with the CPO management system (100, Fig. 1) as well as a flight schedule database (reads on “posting the availability on an electronic medium”) (800, Fig. 6) that stores specific flight information for each origin and destination (O & D) Pair (see: column 9, lines 56-61). Walker et al. teaches a CPO management process (1600, Fig. 16a)

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where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item (reads on “receiving reservation bids from a plurality of independent passengers”), such as air travel, at a customer-defined price, received from a customer and compared against the CPO rules provided by the airline and as a result of the comparison the CPO is either accepted (reads on “accepting the selected bids” and “selecting a number of the received reservation bids, wherein the selected bids collectively satisfy a predetermined set of reservation criteria”), rejected or countered by the airline. Thereafter, the customer is notified of the response of the airlines to the CPO. If an airline accepts the CPO, or if the customer accepts a counteroffer from the airline, a ticket is then booked (reads on “reserving the aircraft based upon the acceptance of the selected bids”) by the CPO management system (100, Fig. 1) (see: column 5, lines 31-43 and column 7, lines 55-67). Additionally, Walker et al. teaches a conditional purchase offer (CPO) management system (100, Fig. 1) that includes a one or more secured airline servers (300, Fig. 11) that stores CPO rules, defined by any associated airlines (see: column 6, lines 23-30)

Walker et al. fails to teach:

- the claimed booking reservations on a plurality of private aircraft; and
- the claimed receiving an availability for at least one private aircraft.

Jonas teaches AirCharter.com which is an online real-time air charter reservation system with Internet booking capabilities for 2,000 aircraft from 800 charter operators (see: paragraph 2). Furthermore, AirCharter.com buys space and time from the charter operators at a wholesale price (see: paragraph 7). In addition, Jonas further teaches that SkyJet.com acts as an intermediary between customers and suppliers (see: paragraph 9).

The obviousness of combining the teachings of Jonas within the system as taught by Walker et al. are discussed in rejection of claim 129, and incorporated herein.

As per claim 131, Walker et al. teaches the claimed predetermined set of reservation criteria includes a departure location and a set of rules identifying possible destination locations, and wherein each of the reservation bids includes a specific destination request. This limitation is met by the conditional purchase offer (CPO) management system (100, Fig. 1) that includes one or more secured airline servers (300, Fig. 11) that stores CPO rules, defined by any associated airlines (see: column 6, lines 23-30). Walker et al. further teaches an airline database (700, Fig. 7) that stores information on each airline, which registered with the CPO management system (100, Fig. 1) as well as a flight schedule database (800, Fig. 6) that stores specific flight information for each origin and destination (O & D) Pair (see: column 9, lines 56-61).

As per claim 132, Walker et al. teaches the claimed selected bids includes the same specific destination request. This feature is met by the airline database (700, Fig. 7) that stores information on each airline, which registered with the CPO management system (100, Fig. 1) as well as a flight schedule database (800, Fig. 6) that stores specific flight information for each origin and destination (O & D) Pair (see: column 9, lines 56-61). Furthermore, Walker et al. teaches a CPO management process (1600, Fig. 16a) where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item, such as air travel, at a customer-defined price, received from a customer and compared against the CPO rules provided by the airline and as a result of the comparison the CPO is either accepted, rejected or countered by the airline. Thereafter, the customer is notified of the response of the airlines to the CPO. If an airline accepts the CPO, or if the customer accepts a counteroffer

from the airline, a ticket is then booked by the CPO management system (100, Fig. 1) (see: column 5, lines 31-43 and column 7, lines 55-67).

As per claim 133, Walker et al. teaches the claimed same specific destination request satisfies the set of rules identifying possible destination locations. This limitation is met by the conditional purchase offer (CPO) management system (100, Fig. 1) that includes one or more secured airline servers (300, Fig. 11) that stores CPO rules, defined by any associated airlines (see: column 6, lines 23-30). Walker et al. further teaches an airline database (700, Fig. 7) that stores information on each airline, which registered with the CPO management system (100, Fig. 1) as well as a flight schedule database (800, Fig. 6) that stores specific flight information for each origin and destination (O & D) Pair (see: column 9, lines 56-61).

As per claim 134, Walker et al. teaches the claimed predetermined set of reservation criteria includes a total profitability threshold. This limitation is met by the tickets sold by the airlines (120, Fig. 5b), while the airline reservation system (ARS) decrements the available inventory seat allocation database (1400, Fig. 14) (see: column 13, lines 17-25). The Examiner considers the total profitability threshold to met according to the decrement of available seats at retail price.

As per claim 135, Walker et al. teaches the claimed total profitability threshold is expressed as a function of seats and price per seat. This feature is met by the tickets sold by the airlines (120, Fig. 5b) the airline reservation system (ARS) will decrement the available inventory seat allocation database (1400, Fig. 14) (see: column 13, lines 17-25). The Examiner considers the total profitability threshold to met according to the decrement of available seats at retail price.

As per claim 136, Walker et al. teaches the claimed reservation bids are responsive to the posted availability. This limitation is met by the airline database (700, Fig. 7) that stores information on each airline, which registered with the CPO management system (100, Fig. 1) as well as a flight schedule database (800, Fig. 6) that stores specific flight information for each origin and destination (O & D) Pair (see: column 9, lines 56-61). Furthermore, Walker et al. teaches a CPO management process (1600, Fig. 16a) where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item, such as air travel, at a customer-defined price, received from a customer (see: column 5, lines 31-43 and column 7, lines 55-67).

As per claims 137-138, Walker et al. teaches the claimed communicating a notification of the acceptance to each of the passengers associated with the selected bids and communicating a notification of the acceptance to an owner of the private aircraft. This limitation is met by the CPO management process (1600, Fig. 16a) where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item, such as air travel, at a customer-defined price, received from a customer and compared against the CPO rules provided by the airline and as a result of the comparison the CPO is either accepted, rejected or countered by the airline. Thereafter, the customer is notified of the response of the airlines to the CPO. If an airline accepts the CPO, or if the customer accepts a counteroffer from the airline, a ticket is then booked by the CPO management system (100, Fig. 1) (see: column 5, lines 31-43 and column 7, lines 55-67).

As per claim 139, Walker et al. teaches the claimed terminating the availability and refusing the received reservation bids if, within a predetermined period of time, no bids can be

selected that collectively satisfy the predetermined set of reservation criteria. This limitation is met by CPO rules generation process (1900, Fig. 19) at step 1910 where it is determined whether a flight is likely to depart with empty seats and if not the flight is terminated (see: column 23, line 59 to column 60, line 13 and Fig. 19). The Examiner considers all reservation bids to be canceled when determined that the total cost received by potential passengers do not satisfy the total expense making the desired flight.

As per claim 140, Walker et al. teaches reserving the private aircraft based upon the acceptance of the selected bids. Each airline server (300, Fig. 1) may be remotely located from the CPO management central server (200, Fig. 1) and integrated with the CPO management central server (200, Fig. 1) (see: column 6, lines 30-33). In addition, CPO rules are a set of restrictions defined by a given seller, such as an airline, to define a combination of restrictions for which the seller is willing to accept at a predefined minimum price (see: column 44-47). Walker et al. further teaches an airline database (700, Fig. 7) that stores information on each airline (reads on “reservation service to post said flight availability on an electronic medium”), which registered with the CPO management system (100, Fig. 1) as well as a flight schedule database (800, Fig. 6) that stores specific flight information for each origin and destination (O & D) Pair (see: column 9, lines 56-61). Furthermore, Walker et al. teaches a CPO management process (1600, Fig. 16a) where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item, such as air travel, at a customer-defined price, received from a customer (reads on “reservation service to receive electronically from said airplane owner a flight availability for said airplane, said flight availability including a departure location, a set of rules identifying possible destination

locations, a departure time constraint, and a minimum total payment required to reserve said airplane, said minimum total payment expressed as a function of available seats and price per seat" and "reservation service to receive reservation bids electronically from a plurality of passengers, said passengers independent of said reservation service owner and said airplane owner, each of said reservation bids including a specific destination request and a payment offer") and compared against the CPO rules provided by the airline and as a result of the comparison the CPO is either accepted (reads on "reservation service to reserve said flight availability and to accept a selected number of said reservation bids if the selected number collectively satisfies the minimum total payment and if the destination requests collectively match the set of rules identifying possible destination locations"), rejected or countered by the airline (reads on "transmit electronically to said airplane owner said reserved flight availability"). Thereafter, the customer is notified of the response of the airlines to the CPO. If an airline accepts the CPO (reads on "reservation service to transmit a notification of said reserved flight availability to said airplane owner"), or if the customer accepts (reads on "reservation service to transmit a notification of said acceptance to each of the passengers associated with the accepted reservation bid") a counteroffer from the airline, a ticket is then booked (reads on "reservation service to transmit electronically to said airplane owner a final passenger list and a final flight schedule that is substantially consistent with said departure time constraints, said departure location, and said destination location") by the CPO management system (100, Fig. 1) (see: column 5, lines 31-43 and column 7, lines 55-67). Additionally, Walker et al. teaches that the parameters of a CPO may allow a customer to specify one or more preferred airline(s), flights, seat assignments, seat class, aircraft type, refund/change rules, or maximum layover time (see:

column 5, lines 31-43). Walker et al. also teaches a CPO management process (1600, Fig. 16C) where credit card information associated with a given customer is transmitted to the credit card issuer for payment (reads on “reservation service to transfer said collected payment to said airplane owner” and “reservation service to collect a payment from each of the passengers, said payment corresponding to said payment offer”) (see: column 9, lines 23-38).

Walker et al. fails to teach:

- the claimed reservation service operated by a reservation service owner;
- the claimed an airplane operated by a private airplane owner, said airplane owner independent of said reservation service owner; and
- the claimed said airplane to fly substantially according to said final flight schedule.

Jonas teaches AirCharter.com which is an online real-time air charter reservation system with Internet booking capabilities for 2,000 aircraft from 800 charter operators (see: paragraph 2). Furthermore, AirCharter.com buys space and time from the charter operators at a wholesale price (see: paragraph 7). In addition, Jonas further teaches that SkyJet.com acts as an intermediary between customers and suppliers (see: paragraph 9).

The obviousness of combining the teachings of Jonas within the system as taught by Walker et al. are discussed in rejection of claim 129, and incorporated herein.

As per claim 141, Walker et al. teaches the claimed reservation service to terminate said flight availability and to refuse said reservation bids if said reservation service fails to match a number of reservation bids with said flight availability such that said minimum total payment requirement is met. This limitation is met by CPO rules generation process (1900, Fig. 19) at step 1910 where it is determined whether a flight is likely to depart with empty seats and it if not

the flight is terminated (see: column 23, line 59 to column 60, line 13 and Fig. 19). The Examiner considers a flight to be terminated when cost exceeds profit.

***Response to Arguments***

Applicant's arguments filed 5/3/04 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 5/3/04.

(A) At page 5-6 of the 5/3/04 response, Applicant argues that Walker does not teach terminating a flight if there are empty seats. The Examiner respectfully submits the Applicant is correct in the assertion that Walker teaches a CPO rules generation process (1900, Fig. 19) at step 1910 where it is determined whether a flight is likely to depart with empty seats and, if not, the processing for that flight is terminated but this only means that the flight is full and no more CPO's for that flight will be processed. However, does Applicant contend that if there are absolutely no seats or passengers, the flight will still occur? As such, the Examiner respectfully submits that the skilled artisan would readily recognize flights may be terminated, regardless of predetermined schedules.

In addition, it appears that Applicant merely considers bits and pieces of Examiner's applied art individually, in a vacuum, without considering the appropriate teachings of the applied reference collectively as a whole. Further, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor

is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Additionally, Applicant's argues features not recited in the claims such as an "unscheduled" flight. Furthermore, the recited claim language "final flight schedule" at lines 16-17 of claim 129 implies an initial or preliminary flight schedule exists, not an unscheduled flight, per se.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Morgan whose telephone number is (703) 605-4441. The examiner can normally be reached on 8:30 a.m. - 5:00 p.m. Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703) 305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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